IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITON NO. 13 OF 2004

Computact Software Services (India)
Pvt. Ltd. & Anr. ..Petitioners.

V/s.

The Regional Provident Fund
Commissioner & Anr. ..Respondents.

Mr.Sanjay Udesh, advocate with S.K.Talsania & Mahesh Londhe i/b. M/s.S. Udeshi & Co.

None for respondents.

CORAM : J.P.DEVADHAR, J.

DATED : 12TH JULY, 2005.

P.C. :-

1. Heard learned counsel for the petitioners. None for the respondents though served. Even on the last occasion, when the matter was called out for hearing on 7th July, 2005 none appeared for the respondents.

2. In the present petition, the challenge is to the order dated 15th September, 2003 passed by the Asstt. Provident Fund Commissioner, Mumbai declining to condone the application filed by the petitioners under section 7A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952.

3. The petitioner No.1 company incorporated in the year 1984 has shut down its operations in March, 1998 due to widespread global slow down and recession in the

computer and software industry. The petitioner No.1 company had opted for the Provident Fund scheme for the benefit of its employees even though it was not obligatory under the Act. It is the case of the petitioners that upto the date of the closure of the business, the petitioner No.1 company has deposited all the amounts required to be deposited under the scheme. However, in the year 2001 the respondents wanted to investigate the matter. On 14/3/2001 the petitioner No.2 had personally visited the office of the respondents and explained the facts in detail. Thereafter, with the additional facts, the petitioner attended the office of the respondents on several occasions but the concerned officer was not available on one ground or the other. Without giving any further hearing, an ex-parte order was passed by Asstt. Provident Fund Commissioner on 22/3/2003 calling upon the petitioners to pay Rs.2,76,258/- with penal interest of Rs.49,692/- under section 7Q of the Act.

4. Since the aforesaid order was forwarded to the old address of the petitioner No.1 company, no action could be taken in the matter. As soon as the petitioners came to know about the said order, the petitioners filed an application on 24/3/2003 under section 7A(4) of the Act seeking condonation of delay. However, by the impugned order dated 15th September, 2003, Asstt.Provident Fund Commissioner rejected the said application on the ground

that the said application made under section 7B of the Act is beyond time.

5. Learned counsel appearing for the petitioners submitted that the application for setting aside the ex-parte order was made under section 7A(4) of the Act and the Asstt. Provident Fund Commissioner has misconstrued the application to have been made under section 7B of the Act and rejected it on the ground that the same was time barred. Learned counsel for the petitioners submitted under section 7A(4) of the Act, the respondents are empowered to condone the delay if sufficient cause is shown. In the present case, the respondents have not considered the cause shown by the petitioners in the application under section 7A(4) of the Act.

6. In this view of the matter, the impugned order dated 15th September, 2003 is quashed and set aside and the respondents are directed to consider the application of the petitioners dated 24th March, 2003 afresh on its own merits and pass appropriate order in accordance with law. The respondents shall not pass any final order on the show cause notice of arrest warrant dated 7th October, 2002 till the application dated 24th March, 2003 is heard and decided.

7. Petition is disposed of accordingly and rule is

made absolute in terms of prayer clause (A) with no order as to costs.

(J.P.DEVADHAR, J.)